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Attorneys for Plaintiff: CARMEN JOHN PERRI

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA- WESTERN DIVISION

CARMEN JOHN PERRI, an
individual,

Plaintiff,

v.

BLAZE PIZZA, a business of
unknown form; MICHAEL L.
SCHIESEL, JONATHAN R.
SCHIESEL, & SUSAN S.
PATTERSON, Co-Trustees of the
SCHIESEL EXEMPT TRUST; and
Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For:**

- 1. VIOLATIONS OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, 42 U.S.C. §12181 *et*
*seq.***
- 2. VIOLATIONS OF THE UNRUH
CIVIL RIGHTS ACT, CALIFORNIA
CIVIL CODE § 51 *et seq.***

Plaintiff, Carmen John Perri (“Plaintiff”), complains of Defendants Blaze
Pizza, a business of unknown form; Michael L. Schiesel, Jonathan R. Schiesel, &
Susan S. Patterson, Co-Trustees of the Schiesel Exempt Trust; and Does 1-10

1 (“Defendants”) and alleges as follows:

2 **PARTIES:**

3 1. Plaintiff is an adult California resident. Plaintiff has a Disabled Person
4 Parking Placard issued to him by the State of California. Plaintiff is substantially
5 limited in performing one or more major life activities, including but not limited to:
6 walking, standing, ambulating, sitting and grasping objects. As a result of these
7 disabilities, Plaintiff relies upon mobility devices, including at times a wheelchair,
8 to ambulate. With such disabilities, Plaintiff qualifies as a member of a protected
9 class under the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12102(2) and
10 the regulations implementing the ADA set forth at 28 C.F.R. §§ 36.101 et seq.
11

12 2. Plaintiff brings this action acting as a “private attorney general” as
13 permitted under the American with Disabilities Act of 1990 (“ADA”) to privatize
14 enforcement of the ADA without the American tax payer(s) bearing the financial tax
15 burden for such action.
16

17 3. Plaintiff is informed and believes and thereon alleges that Defendant
18 Michael L. Schiesel, Jonathan R. Schiesel, & Susan S. Patterson, Co-Trustees of the
19 Schiesel Exempt Trust, owned the property located at 5221 Rosecrans Ave
20 Hawthorne, CA 90250 (“Property”) on or around May 3, 2018.
21

22 4. Plaintiff is informed and believes and thereon alleges that Defendant
23 Michael L. Schiesel, Jonathan R. Schiesel, & Susan S. Patterson, Co-Trustees of the
24 Schiesel Exempt Trust, owns the Property currently.

25 5. Plaintiff is informed and believes and thereon alleges that Defendant
26 Blaze Pizza, a business of unknown form, (“Business”) owns, operates, and controls
27 the Business located at the Property in May 3, 2018.

28 6. Defendant Blaze Pizza, a business of unknown form, operates and
controls the Business located at the Property currently.

1 7. Plaintiff does not know the true names of Defendants, their business
2 capacities, their ownership connection to the subject property and business, or their
3 relative responsibilities in causing the access violations herein complained of, and
4 alleges a joint venture and common enterprise by all such Defendants. Plaintiff is
5 informed and believes that each of the Defendants herein, including Does 1 through
6 10, inclusive, is responsible in some capacity for the events herein alleged, or is a
7 necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend
8 when the true names, capacities, connections, and responsibilities of the Defendants
9 and Does 1 through 10, inclusive, are ascertained.

10 **JURISDICTION AND VENUE**

11 8. This Court has subject matter jurisdiction over this action pursuant
12 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
13 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA").

14 9. This court has supplemental jurisdiction over Plaintiff's non-federal
15 claims pursuant to 28 U.S.C. § 1367, because Plaintiff's Unruh Civil Rights Act
16 ("UCRA") claims are so related to Plaintiff's federal ADA claims in that they have
17 the same nucleus of operative facts and arising out of the same transactions, they
18 form part of the same case or controversy under Article III of the United States
19 Constitution.

20 10. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the
21 real property which is the subject of this action is located in this district and because
22 Plaintiff's causes of action arose in this district.

23 **FACTUAL ALLEGATIONS**

24 11. Plaintiff went to the Business on or about May 3, 2018 to purchase a
25 beverage.

26 12. The Business is a facility open to the public, a place of public
27 accommodation, and a business establishment.

28 13. Parking spaces are one of the facilities, privileges and advantages

1 reserved by defendants to persons at the property serving the Business.

2 14. Unfortunately, although parking spaces were one of the facilities
3 reserved for patrons, there were no designated parking spaces available for persons
4 with disabilities that complied with the Americans with Disability Act Accessibility
5 Guidelines (“ADAAG”) on May 3, 2018.

6 15. Instead of having compliant designated disabled parking on the
7 Property, Defendants have: a curb ramp that projects into the access aisle in the
8 accessible parking space access aisle in violation of Section 406.5. Furthermore, the
9 curb ramp is in excess of the 2% maximum grade allowed by ADAAG
10 specifications (Section 406.1); an interior restroom that has a sink with exposed
11 drain pipes. The combination of ADA violations caused the Plaintiff difficulty and
12 deters the Plaintiff from visiting the Business.
13

14 16. Subject to the reservation of rights to assert further violations of law
15 after a site inspection found *infra*, Plaintiff asserts there are additional ADA
16 violations which affect him personally.

17 17. Plaintiff is informed and believes and thereon alleges Defendants had
18 no policy or plan in place to make sure that there was a compliant accessible access
19 parking reserved for persons with disabilities prior to May 3, 2018.

20 18. Plaintiff is informed and believes and thereon alleges Defendants have
21 no policy or plan in place to make sure that the designated disabled parking for
22 persons with disabilities comport with the ADAAG.

23 19. The designated disabled parking spaces for use by persons with
24 disabilities are a tip over, crash, fall hazard or trip hazard because it contains a built
25 up curb ramp and cross slopes.

26 20. Plaintiff personally encountered these barriers. These inaccessible
27 conditions denied the Plaintiff full and equal access and caused him difficulty,
28 humiliation and frustration.

1 21. As an individual with a mobility disability who at times is dependent
2 upon a wheelchair or other mobility device, Plaintiff has a keen interest in whether
3 public accommodations have architectural barriers that impede full accessibility to
4 those accommodations by individuals with mobility impairments.

5 22. Plaintiff is being deterred from patronizing the Business and its
6 accommodations on particular occasions, but intends to return to the Business for the
7 dual purpose of availing himself of the goods and services offered to the public and
8 to ensure that the Business ceases evading its responsibilities under federal and state
9 law.

10 23. The defendants have failed to maintain in working and useable
11 conditions those features required to provide ready access to persons with
12 disabilities.

13 24. The violations identified above are easily removed without much
14 difficulty or expense. They are the types of barriers identified by the Department of
15 Justice as presumably readily achievable to remove and, in fact, these barriers are
16 readily achievable to remove. Moreover, there are numerous alternative
17 accommodations that could be made to provide a greater level of access if complete
18 removal were not achievable.

19 25. Given the obvious and blatant violation alleged hereinabove, Plaintiff
20 alleges, on information and belief, that there are other violations and barriers in the
21 site that relate to his disability. Plaintiff will amend the complaint, to provide proper
22 notice regarding the scope of this lawsuit, once he conducts a site inspection.
23 However, please be on notice that the Plaintiff seeks to have all barriers related to
24 his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding
25 that once a plaintiff encounters one barrier at a site, the plaintiff can sue to have all
26 barriers that relate to his disability removed regardless of whether he personally
27 encountered them).

28 26. Given the obvious and blatant violation alleged hereinabove, Plaintiff

1 alleges, on information and belief, that the failure to remove these barriers was
 2 intentional because: (1) these particular barriers are intuitive and obvious; (2) the
 3 defendants exercised control and dominion over the conditions at this location prior
 4 to May 3, 2018, (3) the lack of accessible facilities was not an accident because had
 5 the defendants intended any other configuration, they had the means and ability to
 6 make the change.

7 27. Without injunctive relief, plaintiff will continue to be unable to fully
 8 access Defendants' facilities in violation of Plaintiff's rights under the ADA.

9 **FIRST CAUSE OF ACTION**

10 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

11 **42 U.S.C. § 12181 et seq.**

12 28. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
 13 above and each and every other paragraph in this Complaint necessary or helpful to
 14 state this cause of action as though fully set forth herein.

15 29. Under the ADA, it is an act of discrimination to fail to ensure that the
 16 privileges, advantages, accommodations, facilities, goods, and services of any place
 17 of public accommodation are offered on a full and equal basis by anyone who owns,
 18 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).
 19 Discrimination is defined, inter alia, as follows:

- 20 a. A failure to make reasonable modifications in policies, practices,
 21 or procedures, when such modifications are necessary to afford
 22 goods, services, facilities, privileges, advantages, or
 23 accommodations to individuals with disabilities, unless the
 24 accommodation would work a fundamental alteration of those
 25 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 26 b. A failure to remove architectural barriers where such removal is
 27 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 28 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,

Appendix "D".

- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

30. Any business that provides parking spaces must provide accessible parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. Under the 1991 Standards, parking spaces and access aisles must be level with surface slopes not exceeding 1:50 (2.0%) in all directions. 1991 Standards § 4.6.2. Under the 2010 Standards, access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are required to be nearly level in all directions to provide a surface for wheelchair transfer to and from vehicles." 2010 Standards § 502.4 Advisory. Here the failure to provide a level access aisle in the designated disabled parking space is a violation of the law and excess slope angle in the access pathway is a violation of the law.

31. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

32. Here, the failure to ensure that accessible facilities were available and ready to be used by Plaintiff is a violation of law.

33. Given its location and options, Plaintiff will continue to desire to patronize the Business but he has been and will continue to be discriminated against due to lack of accessible facilities and, therefore, seeks injunctive relief to remove the barriers.

SECOND CAUSE OF ACTION

VIOLATION OF THE UCRA, CALIFORNIA CIVIL CODE § 51 *et seq.*

34. Plaintiff re-alleges and incorporates by reference all paragraphs alleged above and each and every other paragraph in this Complaint necessary or helpful to state this cause of action as though fully set forth herein.

35. California Civil Code § 51 *et seq.* guarantees equal access for people with disabilities to the accommodations, advantages, facilities, privileges, and services of all business establishments of any kind whatsoever. Defendants are systematically violating the UCRA, Civil Code § 51 *et seq.*

36. Because Defendants violate Plaintiff's rights under the ADA, they also violated the UCRA and are liable for damages. (Civ. Code § 51(f), 52(a).) These violations are ongoing.

37. Plaintiff is informed and believes and thereon alleges that Defendants' actions constitute intentional discrimination against Plaintiff on the basis of a disability, in violation of the UCRA, Civil Code § 51 *et seq.*, because Defendants have been previously put on actual or constructive notice that the Business is inaccessible to Plaintiff. Despite this knowledge, Defendants maintain their premises in an inaccessible form, and Defendants have failed to take actions to correct these barriers.

PRAYER

WHEREFORE, Plaintiff prays that this court award damages provide relief as follows:

1. A preliminary and permanent injunction enjoining Defendants from further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and UCRA, Civil Code § 51 *et seq.* with respect to its operation of the Business and Property; **Note: Plaintiff is not invoking section 55, *et seq.*, of the California Civil Code and is not seeking injunctive relief under the Disable Persons Act (Cal. C.C. §54) at all.**

2. An award of actual damages and statutory damages of not less than

1 \$4,000 per violation pursuant to § 52(a) of the California Civil Code;

2 3. An additional award of \$4,000.00 as deterrence damages for each
3 violation pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016 U.S. Dist.
4 LEXIS 150740 (USDC Cal, E.D. 2016);

5 4. For reasonable attorneys' fees, litigation expenses, and costs of suit,
6 pursuant to 42 U.S.C. § 12205; California Civil Code § 52;

7
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby respectfully requests a trial by jury on all appropriate issues
10 raised in this Complaint.

11
12 Dated: May 23, 2018

MANNING LAW, APC

13
14 By: /s/ Joseph R. Manning Jr., Esq.

15 Joseph R. Manning Jr., Esq.

16 Michael J. Manning, Esq.

17 Craig G. Côté, Esq.

18 Attorneys for Plaintiff
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